



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2013-0645; FRL-9907-08-Region 5]

**Approval and Promulgation of Air Quality Implementation Plans;
Wisconsin; Transportation Conformity Procedures**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the State of Wisconsin on August 1, 2013, for the purpose of establishing transportation conformity "Conformity" criteria and procedures related to interagency consultation, and enforceability of certain transportation related control and mitigation measures. This revision replaces Wisconsin's Conformity SIP that was approved on August 27, 1996.

DATES: This direct final rule will be effective [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER], unless EPA receives adverse comments by [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the Federal Register informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No.

EPA-R05-OAR-2013-0645, by one of the following methods:

1. www.regulations.gov: Follow the on-line instructions for submitting comments.
2. E-mail: blakley.pamela@epa.gov.
3. Fax: (312) 692-2450.
4. Mail: Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. Hand Delivery: Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No.

EPA-R05-OAR-2013-0645. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes information claimed to be Confidential Business

Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through www.regulations.gov or e-mail. The www.regulations.gov website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through www.regulations.gov your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the www.regulations.gov index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly

available only in hard copy. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Michael Leslie, Environmental Engineer, at (312) 353-6680 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Michael Leslie, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR-18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353-6680, leslie.michael@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we," "us," or "our" is used, we mean EPA. This supplementary information section is arranged as follows:

- I. What is the Background for This Action?
- II. What is EPA's analysis of Wisconsin's SIP revision?
- III. What Action is EPA Taking?
- IV. Statutory and Executive Order Reviews.
- I. What is the background for this action?**

Transportation conformity is required under section 176(c)

of the Clean Air Act (Act) to ensure that transportation planning activities are consistent ("conform to") with air quality planning goals in nonattainment/maintenance areas. The transportation conformity regulation is found in 40 CFR part 93 and provisions related to transportation conformity SIPs are found in 40 CFR 51.390. Transportation conformity applies to areas that are designated nonattainment or maintenance for the following transportation related criteria pollutants: Ozone, particulate matter (PM_{2.5} and PM₁₀), carbon monoxide, and nitrogen dioxide.

EPA originally promulgated the Federal transportation conformity criteria and procedures ("Transportation Conformity Rule") on November 24, 1993 (58 FR 62188). On August 10, 2005, the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" (SAFETEA-LU) was signed into law. SAFETEA-LU revised section 176(c) of the Act which contains transportation conformity provisions. SAFETEA-LU streamlined the requirements for conformity SIPs. Under SAFETEA-LU, states are required to address and tailor only three sections of the rules in their conformity SIPs: 40 CFR 93.105, 40 CFR 93.122(a)(4)(ii), and, 40 CFR 93.125(c). States are no longer required to submit conformity SIP revisions that address the other sections of the conformity rule. Wisconsin's SIP

revision updates the state's transportation conformity provisions, to be consistent with the Act as amended by SAFETEA-LU and EPA regulations (40 CFR part 93 and 40 CFR 51.390).

II. What is EPA's analysis of Wisconsin's SIP revision?

A conformity SIP can be adopted as a state rule, as a memorandum of understanding (MOU), or memorandum of agreement (MOA). The appropriate form of the state conformity procedures depends upon the requirements of local or state law, as long as the selected form complies with all Act requirements for adoption, submission to EPA, and implementation of SIPs. EPA will accept state conformity SIPs in any form provided the state can demonstrate to EPA's satisfaction that, as a matter of state law, the state has adequate authority to compel compliance with the requirements of the conformity SIP.

Wisconsin concluded that this SIP revision in the form of a MOA will be enforceable through a number of Wisconsin Statutes, as with their original conformity SIP. These statutes authorize state agencies to enter into legally binding cooperative contracts for the receipt or furnishing of services. Wisconsin collaborated with the Wisconsin Department of Transportation (WisDOT), EPA, Federal Highway Administration (FHWA), Federal Transit Administration, the Southeast Regional Planning Commission (SEWRPC), Bay-Lake Regional Planning Commission

(BLRPC), to develop the Transportation Conformity MOA. This MOA was agreed upon and signed by all of the above consultation parties.

EPA has evaluated this SIP submission and finds that the state has addressed the requirements of the Federal transportation conformity rule as described in 40 CFR part 51, subpart T and 40 CFR part 93, subpart A. The transportation conformity rule requires the states to develop their own processes and procedures for interagency consultation and resolution of conflicts meeting the criteria in 40 CFR 93.105. The SIP revision did include processes and procedures to be followed by the MPO, state DOT, and U.S. DOT in consulting with the state and local air quality agencies and EPA before making transportation conformity determinations. Their transportation conformity SIP also included processes and procedures for the state and local air quality agencies and EPA to coordinate the development of applicable SIPs with MPOs, state DOTs, and U.S. DOT, and requires written commitments to control measures and mitigation measures (40 CFR 93.122(a)(4)(ii) and 93.125(c)).

EPA's review of the Wisconsin SIP revision indicates that is consistent with the Act as amended by SAFETEA-LU and EPA regulations (40 CFR part 93 and 40 CFR 51.390) governing state procedures for transportation conformity and interagency

consultation and has concluded that the submittal is approvable.

III. What Action is EPA Taking?

EPA is approving a SIP revision submitted by the State of Wisconsin, for the purpose of establishing transportation conformity criteria and procedures related to interagency consultation, and enforceability of certain transportation related control and mitigation measures.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this Federal Register publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse written comments are filed. This rule will be effective [INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further notice unless we receive relevant adverse written comments by [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on

this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective [INSERT DATE 60 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

IV. Statutory and Executive Order Reviews.

Under the Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or

environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Act, petitions for judicial

review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [INSERT DATE 60 DAYS FROM DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's Federal Register, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control,
Incorporation by reference, Intergovernmental relations, Ozone,
Particulate matter, Volatile organic compounds.

Dated: February 10, 2014

Susan Hedman,
Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Section 52.2584 is amended by adding paragraph (c) to read as follows:

§ 52.2584 Control strategy; Particulate matter.

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(c) Approval – On August 1, 2013, the State of Wisconsin submitted a revision to their Particulate Matter State Implementation Plan. The submittal established transportation conformity “Conformity” criteria and procedures related to interagency consultation, and enforceability of certain transportation related control and mitigation measures.

3. Section 52.2585 is amended by adding paragraph (bb) to read as follows:

§ 52.2585 Control strategy; Ozone.

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(bb) Approval – On August 1, 2013, the State of Wisconsin submitted a revision to their Ozone State Implementation Plan. The submittal established transportation conformity “Conformity” criteria and procedures related to interagency consultation, and

enforceability of certain transportation related control and mitigation measures.

[FR Doc. 2014-04168 Filed 02/26/2014 at 8:45 am; Publication Date: 02/27/2014]